Building Material and Dump Truck Drivers Teamsters Local Union No. 36, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America; Southern California District Council of Laborers and its Affiliated Local Union 89, affiliated with the Laborers' International Union of North America, AFL-CIO; Operative Plasterers' and Cement Masons' International Association, Local Union 744, AFL-CIO; San Diego District Council of Carpenters of the United Brotherhood of Carpenters and Joiners of America, AFL-CIO; San Diego County Building & Construction Trades Council *and* M. H. Golden Company. Case 21-CP-654

31 August 1984

DECISION AND ORDER

BY CHAIRMAN DOTSON AND MEMBERS ZIMMERMAN AND DENNIS

On 30 March 1984 Administrative Law Judge Timothy D. Nelson issued the attached decision. The General Counsel filed exceptions and a supporting brief. Respondents Laborers Local 89, Teamsters Local 36, Plasterers Local 744, and the Building Trades Council all filed answering briefs to the General Counsel's exceptions.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings, and conclusions and to adopt the recommended Order.

ORDER

The recommended Order of the administrative law judge is adopted and the complaint is dismissed.

DECISION

STATEMENT OF THE CASE

TIMOTHY D. NELSON, Administrative Law Judge. M. H. Golden Company (Golden) filed unfair labor practice charges in Case 21-CP-654 on June 16, 1983[1] against all respondent parties named in the case caption.[2] After investigating those charges, the Regional Director for Region 21 of the National Labor Relations Board (Board) issued an order consolidating cases, consolidated complaint, and notice of hearing on October 6.

The consolidated complaint contained allegations that Respondents had violated Sections 8(b)(3) and 8(b)(7)(C) of the National Labor Relations Act (Act). Respondents duly answered, denying any wrongdoing.

I was designated to hear these and a large number of related cases against Respondents, some of which involved Golden. As a consequence of settlements and other informal dispositions concluded at the courthouse steps (and, in many cases, not perfected until after the opening of the instant trial record), the only allegations now before me for resolution are those 8(b)(7)(C) allegations contained in the consolidated complaint.[3] Trial on the 8(b)(7)(C) allegations took place in San Diego on October 25 and 26.

I have fully considered the posttrial briefs filed by counsel for the General Counsel and by counsel for all Respondents except the Carpenters.

Issues

The ultimate issue is whether Respondents—or any one or more of them—violated Section 8(b)(7)(C) of the Act by certain picketing against Golden. The more particular issues raised by this litigation are best identified and understood after a summary narration of the undisputed facts. Accordingly, on the entire record, I make these

FINDINGS OF FACT

I. THE UNFAIR LABOR PRACTICES

A. *Introduction and Background*

Golden, the Charging Party, is a construction industry entity which emerged from the dissolution and sale of assets of a predecessor operation, also called M. H. Golden Company. Throughout this decision Golden refers to the new entity; Old Golden refers to the predecessor.[4]

Old Golden had been a general contractor in the construction industry in San Diego County since the early 1900s. Since at least the 1940s Old Golden had been a member of the San Diego Chapter, Associated General Contractors of America (AGC). Using AGC as its bargaining agent, Old Golden had been party to successive master-labor agreements with the Four Crafts. The master-labor agreement (MLA) effective June 16, 1980, through June 15, 1983, was subscribed to by agents of

[1] All dates are in 1983 unless otherwise specified.

[2] Where no distinctions are necessary, the named respondent parties will be called collectively "Respondents." Individually, those parties will be called, respectively: Teamsters, Laborers, Cement Masons, Carpenters, and Council. Often, it will be possible to lump together for descriptive purposes all Respondents except the Council. In such cases the term Four Crafts will be used. Sometimes it will suffice simply to refer to the Unions.

[3] The settlement/disposition process, in addition to removing from issue the 8(b)(3) allegations in the instant complaint, also took care of a large number of cases in which it was alleged that these Respondents violated Sec. 8(b)(4)(i)(ii)(A) and (B), and Sec. 8(e) of the Act. Included in these cases, which are too numerous to warrant detailing here, were allegations stemming from charges filed by Golden in Case 21-CC-2684 arising out of the same negotiating background and picketing conduct directed against "Golden" which is described in Findings, infra. This now disposed-of "Golden" case likewise included allegations that Respondents had engaged in unlawful "secondary" action in violation of Sec. 8(b)(4)(A) and (B) and 8(e).

[4] Except where noted otherwise, findings below derive from the uncontradicted testimony of Richard Bail, Golden's executive vice president.

each of the Four Crafts, on the one hand, and by agents of AGC and other employer associations, on the other. For our purposes, the historical relationship can be characterized as involving a single collective-bargaining unit consisting of all employees doing Four Crafts' work for all employer-members of AGC (and for employer-members of other multiemployer associations signatory to the successive MLA's).

The directors of Old Golden wished to get out of the construction business. As a consequence, on or about June 30, 1982, Old Golden terminated its employees, including approximately 200 employees represented by Four Crafts, and sold its construction equipment and related assets to an intermediate entity, Sub-1. Almost immediately, Sub-1 acquired the Golden name and hired all of the employees which Old Golden had terminated.[5]

As part of the sale of the construction operation, Golden acquired and assumed responsibility for completion of Old Golden's jobs-in-progress. Virtually simultaneous with its acquisition of that operation, Golden (as Sub-1) joined AGC. It continued, thereafter, to use Four Crafts employees to complete those jobs and it honored and applied to those employees all terms in the 1980–1983 MLA.[6]

It was part of Golden's business plan, however, eventually to perform only construction management functions and to subcontract jobsite work to other construction firms. Most new work undertaken by Golden after June 30, 1982, was limited to such management functions, although Golden admittedly undertook "two or three" new projects using unit employees during the ensuing 6-month period while it was otherwise "testing" its business plan. The general pattern, however, was that unit employees were laid off incrementally as the various carryover contracts were completed.

B. *Golden Resigns from AGC and Later Deals Directly with Respondent*

On December 28, 1982, anticipating negotiations for a successor MLA, Golden wrote to AGC revoking AGC's authority to conduct any further labor negotiations on its behalf. On the same date, Golden wrote to the Four Crafts that it had revoked AGC's bargaining authority and that it intended to terminate the current MLA. Golden further stated in that communication to the Four Carfts that it was willing "to discuss any and all matters relative to the collective bargaining agreement, including [Golden's] intention to terminate the agreement."

This communication did not trigger any immediate response. Months later, however, on May 18, Golden wrote to the Council[7] with copies to each of the Four Crafts stating, among other things, that Golden "proposes to operate primarily as a Construction Manager/General Contractor . . . and to permanently and totally cease being an employer of any building trades including, but not limited to the [Four Crafts]." That letter further sets forth Golden's reasons for pursuing this new business plan and invited either the agreement of the "Building Trades" to Golden's proposal (in which case, Golden offered to "propose an appropriate termination treatment for those employees") or, failing such agreement, that "Building Trades Council" itself make "proposals for a collective-bargaining agreement that accommodate, meet, or respond in some way to [Golden's] reasons for ceasing to function as an employer and make it worthwhile to remain an employer."

On June 9, a letter to Golden (and other AGC resignees) was sent on Council stationery, but signed only by agents of each of the Four Crafts, advising that a new AGC agreement had been reached to be effective June 16 and setting forth the major changes from the predecessor MLA. Recognizing Golden's current independent bargaining status, the Four Crafts invited Golden (and the other resignees) to sign an enclosed "Short Form Jobsite Agreement" with the intended effect that those signers would be bound by the substantive terms of the new AGC contract, albeit individually.

This same proposal had been made in a group meeting at the Laborers hall on June 8 attended by Golden and the other contractors not represented by AGC. That meeting and the June 10 meeting described below were chaired by Carpenters' business manager and secretary-treasurer Jim Clark, with various union attorneys and Don Guthrie, the Council's business manager, in attendance, but playing a passive role. It appears that there were no discussions during the June 8 meeting directed specifically to Golden's situation; rather such discussions occurred in subsequent meetings at the Laborers hall on June 10 and June 14, in which Golden was the only employer participant.

In the June 10 meeting the union participants stated that they had no problem with Golden's proposed business plan to discontinue operating as an employer and to function only as a manager of construction projects. Golden agents told the union participants that Golden did not currently employ any bargaining unit employees

[5] There were some officers and directors of Old Golden who became associated as officers, directors, and owners of Sub-1 and, in turn, of Golden. The ownership or de facto control of virtually all of Old Golden's stock was vested in two members of the Golden family. The emergence of Golden, the successor entity, was attended by the introduction into the picture of a Texas corporation, Centex, which held 80 percent of the shares in Sub-1, and then, in Golden. The identities of the Centex principals are not clear from the record, but it is assumed, in the absence of more details, that they were strangers to the Old Golden operation. In any case, the vagueness of the record makes it impossible to find that Golden is merely a disguised continuance—or the alter ego—of Old Golden. If anything, such a view would be contradicted by undenied evidence that the owners of Old Golden wished to embark upon an entirely new investment operation, no doubt using proceeds from the sale of Old Golden's assets; and that they formed a new corporation, Silvergate, for this purpose. Thus, based on findings below that Golden hired all of Old Golden's employees and continued thereafter during its term to honor and apply the current MLA, I treat Golden as no more than a successor to Old Golden, one who elected to recognize the Four Crafts and to honor their labor agreement, all as contemplated in *NLRB v. Burns International Security Services*, 406 U.S. 272, 281–291 (1972).

[6] Respondents admit—and I find—that Golden annually buys more than $50,000 worth of goods and services for use in its California operations directly from suppliers outside California.

[7] The Council is admitted by Respondents to be an association composed of certain labor organizations, including each of the Four Crafts. Counsel for the Council conceded at trial that the Council plays a coordinating role on behalf of the Four Crafts. Respondents have denied, however, that the Council is itself a labor organization or an "agent" or the Four Crafts.

and did not intend in the future to do so.[8] It was proposed from the union side that Golden sign what the parties have termed an "area standards" subcontracting agreement having the intended effect of committing Golden to require any of its future subcontractors employing workers doing any Four Crafts work to be signatory to—or, at least, bound by—the applicable portions of the new MLA.[9]

Golden and the union participants met again on June 14. This time lawyers for each side did all the talking. Golden formally rejected the proposed "subcontractors" agreement, but countered with a written proposal of its own. In essence, Golden proposed what the parties have termed a "project agreement," a form of "prehire" contract in which Golden would apply the terms of the new MLA on any project where it employed four or more persons doing work of the type covered by the MLA. The union participants rejected this, stating they "did not feel it adequately protected bargaining unit work." Instead, they pressed for Golden's acceptance of their own proposed subcontract agreement. Golden rejected this again and the meeting ended on that impasse. There have been no further communications of substance between the unions and Golden on these matters.

C. *Picketing Alleged to Violate Section 8(b)(7)(C)*

Thereafter, commencing on June 16, picketing took place intermittently at two of Golden's San Diego-area projects, the First Interstate project and the Graham International project. The timing, nature, and extent of the picketing was stipulated to by all parties, as follows:

STIPULATION NO. 1

On June 16, 17, 20, 21, 22, and 23, 1983, and on July 7, 8, 11, 12, 13, and 14, 1983, Respondent Carpenters and Respondent Laborers picketed Golden at the First Interstate project with picket signs which read:

CARPENTERS-LABORERS-TEAMSTERS
AND CEMENT MASONS
AFL-CIO
ON STRIKE
M. H. GOLDEN
NO AGREEMENT
SANCTIONED BY
SAN DIEGO COUNTY
BUILDING TRADES COUNCIL

STIPULATION NO. 2

On July 25 and 26, 1983, Respondent Carpenters and Respondent Laborers picketed Golden at the First Interstate project with picket signs which read:

CARPENTERS-LABORERS
AND CEMENT MASONS
AFL-CIO
ON STRIKE
M. H. GOLDEN
NO AGREEMENT
SANCTIONED BY
SAN DIEGO COUNTY
BUILDING TRADES COUNCIL

STIPULATION NO. 3

On July 25, 26, 27, and August 1, 1983, Respondent Carpenters picketed Golden at Gate #1 of the Graham International project with picket signs which read:

CARPENTERS-LABORERS
CEMENT MASONS
ON STRIKE
M. H. GOLDEN
IS UNFAIR
SANCTIONED BY
SAN DIEGO BUILDING AND
TRADES COUNCIL AND
JOINT COUNCIL NO. 42

The picketing just described was interrupted by a district court-mandated, 10-day hiatus which, as the parties stipulated, covered the period from 5 p.m. on July 14 to 5 p.m. on July 24.[10] By then 29 days had elapsed since the first day of picketing.

D. *The July 15 Representation Petition by the Four Crafts*

On July 15, immediately after the district court's entry of the restraining order, the Four Crafts filed a joint representation petition in Case 21-RC-17246 seeking an election in a unit described as "All [nonsupervisory] employees doing jobsite construction work" for Golden. In the space on the petition form calling for the "number of employees in unit," the Four Crafts had entered: "Unknown."

The petition was processed by the director's undertaking of an investigation. On July 28, the director issued a dismissal letter to the parties stating his investigative conclusion, in substance, that Golden "does not employ any employees in classifications which could be included in

[8] Apart from evidence about the undisputed status of two yard personnel (Pulsipher and Asch, see Miscellany, infra), there is no evidence which contradicts Golden's statement made in the June 10 meeting that it no longer employed any Four Crafts employees.

[9] The legality of such an agreement under Sec. 8(e) of the Act is not in issue in this proceeding—that being a matter which was separately alleged and later withdrawn as part of the settlement/disposition process referred to in the "Statement," supra.

[10] The precise nature of the court proceeding, held in the United States District Court for the Southern District of California, is not available from the record. Probabilities are that it arose from a petition filed by the Regional Director under Sec. 10(l) of the Act. It is not clear, if it *was* a 10(l) proceeding, whether it was brought in connection with the instant Sec. 8(b)(7)(C) matter, or in connection with the related Sec. 8(b)(4)(A) and (B) charges also being pressed by Golden and other contractors against these Respondents. Speculating, one could conclude that Sec. 8(b)(7) considerations were not involved at that stage since the Regional Director had not, by then, issued any such complaint and this would have hampered his ability to aver to the district court that he had "reasonable cause to believe" that an 8(b)(7) violation had occurred.

the bargaining unit . . . ." The parties stipulated that a timely request for review was thereafter filed and that the Board had not acted on that review request at any time before this trial record closed.

The record fails to show precisely when the Four Crafts obtained notice of the director's dismissal action, there being no return receipts in evidence. July 28 was a Thursday. The picketing stipulations reveal that picketing was conducted against Golden by some of the Respondents on one additional day after July 28, that is on August 1, a Monday, at the Graham International project. Were it material to the result I would infer, given the intervening weekend, that the dismissal letter dispatched on July 28 was not received by any of the Four Crafts until August 1 at the earliest.

E. *Miscellany*

There was litigation over the questions of the duties and authorities of two individuals employed by Golden after it had declared itself to be out of the business of employing unit employees. Both of these persons, Pulsipher and Asch, worked in an equipment yard where Golden traditionally maintained construction vehicles and other equipment when not in use on its construction projects.[11] Asch was salaried and held the title shop foreman or assistant. Pulsipher was an hourly paid purchasing agent. These individuals had been deemed to be within the historical Four Crafts unit—at least before Golden began phasing in its new business plan—but there is room for debate whether their post-June 16 assignments were substantially similar in character to their normal job task before then. There is also similar basis for doubt whether their post-June tasks would be properly regarded as being within the "jobsite construction work" unit identified in the joint petition filed by the Four Crafts on July 15. It is also not clear whether the Four Crafts were aware of these two persons' continuing employment at the time the joint petition was filed, or, if so, whether they were the target of the petition. It appears from statements of counsel during trial and on brief that Respondents would have me find that Pulsipher was a supervisor and that Asch was a nonsupervisory unit employee. Such a finding would enable the Four Crafts to argue that they were seeking an election in a 1-man unit, thus exempting their picketing from the proscriptions of Section 8(b)(7)(C) under a doctrine alluded to below in the analysis.

Because I do not find it necessary to the outcome of this case to discuss further or decide the status occupied by either Pulsipher or Asch on and after June 16, I leave that subject and turn directly to an analysis of the significant questions.

[11] By June, the yard equipment was being sold off and Pulsipher's and Asch's activities were directed towards that equipment-disposition process—not towards ongoing maintenance.

II. ANALYSIS AND CONCLUSIONS

A. *Introduction; General Legal Setting; the Contentions of the General Counsel*

In pertinent part Section 8(b)(7)(C) outlaws picketing by a union of any employer for organizational or recognitional purposes where no election petition has been filed "within a reasonable period of time not to exceed 30 days from the commencement of such picketing." As the Board noted in *Blinne*[12] Section 8(b)(7) is a product of legislative "compromise between strong contending forces and deeply held views on the role of organized labor in the free economic life of the Nation." Id. 135 NLRB at 1155. The resulting language adopted by Congress has been described as "confusing" and "murky." Morris, *The Developing Labor Law* (2d ed., Vol. II) at 1064. The same may be said of many of the construing cases.

The General Counsel's brief begins by noting that under the Supreme Court's decision in *Higdon*[13] and the Board's decision in *Noonan* a "recognitional" objective exists—and Section 8(b)(7)(C) is violated—when a union pickets to obtain a Section 8(f) "pre-hire" agreement without a petition having been filed within 30 days from the start of picketing. And the General Counsel's central factual contention is that the picketing of Golden by Respondents was to obtain just such a prehire agreement. For reasons unnecessary to detail, the General Counsel would contend that all Respondents (save the Teamsters) were involved at all times in "joint venture" picketing which, in fact, exceeded 30 days. But, avoiding legal complications arising from the fact that a petition was, indeed, filed within 30 days after the instant picketing commenced,[15] the General Counsel maintains that, in circumstances where Golden did not employ any unit employees when the picketing began, and did not intend to do so in the future, such picketing "violated Section 8(b)(7)(C) ab initio." And it is this latter, ab initio, contention which the General Counsel readily concedes would break new legal ground if adopted herein; for not only is there no Board precedent for such a proposition, but there are indications that it is a disfavored rationale, as I discuss next.

In *Noonan*, supra, the Board could have held, but did not, that the union's picketing to compel Noonan to sign a prehire agreement privileged by Section 8(f) was invalid from the outset. Rather, the Board relied on the fact that the picketing for that object exceeded 30 days. (142 NLRB at 1133.) And, perhaps more directly to the

[12] *Hod Carriers Local 840 (Blinne Construction)*, 135 NLRB 1153 (1962).

[13] *NLRB v. Ironworkers Local 103 (Higdon Contracting)*, 434 U.S. 335 (1978).

[14] *Operating Engineers Local 542 (R. S. Noonan)*, 142 NLRB 1132 (1963), enfd. 331 F.2d 99 (3d Cir. 1964), cert. denied 379 U.S. 881.

[15] As the stipulated facts reveal only 29 days had elapsed from the commencement of any picketing until the point at which a district court issued a temporary restraining order against further picketing for a 10-day period. And, on July 15, well before any picketing was resumed, the Four Crafts had filed their petition seeking an election and certification in a unit of all of the Golden's nonsupervisory jobsite construction employees.

point, the Board concluded: "In our view, a holding here that a union can picket *indefinitely* [emphasis added] to force an employer to sign a *pre-hire* contract would run contrary to the purposes of the section." Id. at 1135.

In *Teamsters Local 282 (General Contractors)*, 262 NLRB 528 (1982), the Board was again invited to adopt the proposition that *any* picketing for prehire recognition under circumstances where there were no current employees in the proposed voting unit violates Section 8(b)(7)(C). In that case, admittedly recognitional picketing was conducted for 3 days to achieve inclusion into an existing bargaining unit of certain persons found by the Board to be guards within the meaning of Section 9(b)(3) of the Act. Rejecting the rationale that the picketing violated Section 8(b)(7)(C) ab initio because any election petition which might have been filed could not be processed due to the "nonexistence of the voter unit," the Board relied instead on its finding that the picketing union would be "ineligible to be certified as the collective-bargaining representative because it would be admitting both guards and nonguards to membership." (262 NLRB at 530.)[16]

The General Counsel's ab initio theory in this case may therefore be seen as another attempt to place before the Board the proposition which the Board has so far indicated a reluctance to embrace. I do not find it necessary to decide this recurring and vexing question because, as I conclude below, the picketing in this case was not recognitional in character. Rather, for reasons more fully explicated in my decision in *Carpenters Local 2361 (Adams Insulation Co.)*, 248 NLRB 313, 318-321 (1980),[17] I merely record here my doubts about attempts to apply to cases involving certifiable unions the rationale tailored by the Board in such cases as *Teamsters Local 282* and *A-1 Security*, supra, to meet unique problems posed when a union which is uncertifiable due to the strictures of Section 9(b)(3) pickets to obtain recognition in a mixed guard/nonguard unit.

Also, because I do not find that the picketing was recognitional in its purpose, I do not address the more subtle questions whether Respondents—or any smaller grouping of them; and, if so, which ones—were properly chargeable with responsibility for all, or any discrete portions of, the picketing which was stipulated to have occurred. For the same reasons, I do not deal with the alternative defense advanced by some Respondents that if the picketing was recognitional in purpose, it was not for initial recognition, but rather it was done in the context of an existing bargaining relationship and was therefore exempt from the proscriptions of Section 8(b)(7)(C).[18]

B. *The Purpose of the Picketing*

The General Counsel does not identify the evidence on which he relies when he asserts summarily: "In the instant case it is clear that Respondents were seeking a Section 8(f) 'pre-hire' agreement." My own view of the record is that this is not at all clear. Indeed it appears to be contradicted by the General Counsel's presentation of evidence through Golden's agent Bail, as I discuss next.

Bail's testimony makes it clear that when the parties left the bargaining table after their final session on June 14, they were at impasse, this being the nature of that impasse: the union participants wanted an area standards subcontractors' clause whereby Golden would use only those subcontractors who would honor and apply to their employees doing Four Crafts work the wages, benefits, and working conditions—in short, the standards—established in the MLA then recently concluded between the Four Craft an AGC. Golden was unwilling to accept this, but was prepared to offer a kind of modified prehire agreement whereby Golden would apply the MLA on those jobs where it employed four or more Four Crafts unit employees. The unions would not accept that proposal, because it did not adequately protect unit work.

In summary, the only proposal for something in the nature of a prehire contract on the table immediately before the picketing began had come from Golden—not the unions. The only proposal then on the table from the union's side reflected their acquiescence in Golden's "business plan" to cease being an employer and their decision to pursue instead a device which would insure that work done on Golden's projects by subcontractors would be done under MLA standards.

If this is so then it would appear strained to suggest that the picketing which immediately followed the June 14 impasse was for any purpose other than to achieve by economic action that which the unions had been unable to achieve at the bargaining table, i.e., an area standards subcontrators' agreement. And if, as I conclude, the latter purpose underlay the ensuing picketing campaign, the law appears to be settled that such picketing is not "recognitional" and thus does not implicate Section 8(b)(7). *North Central Montana Trades Council (Sletten Construction Co.)*, 222 NLRB 176 (1976); see also *Garment Workers (Hazantown)*, 212 NLRB 735 (1974).[19]

Although not explicit in the General Counsel's assertion that the unions were seeking a prehire agreement, it may be that the General Counsel relies on the fact that, before the unions and Golden ever met to negotiate separately, they had sent Golden (and other AGC resignees) a letter inviting those employers to sign short-form

[16] The Board here followed the precedent established in *Service Employees Local 73 (A-1 Security Service)*, 224 NLRB 434 (1976). There, a divided Board (Chairman Murphy and Member Fanning dissenting) held that the statutory proscriptions in Sec. 9(b)(3) of the Act against certification of a union as the representative of employees in a bargaining unit of guards where the union also admitted nonguards to membership required the conclusion under Section 8(b)(7)(C) that recognitional picketing by such a union for *any* duration would violate the statute.

[17] The Board found it ultimately unnecessary in *Adams Insulation* to pass on the rationale advanced in the JD passages just cited. (248 NLRB at 313-315.)

[18] The Laborers main defense is that the picketing was not recognitional because it was aimed at achieving a subcontractors agreement. The brief filed by the other Respondents (excluding the Carpenters, who filed no brief) contains an imposing variety of alternative contentions, including that the picketing was not for initial recognition. The Laborers adopt that latter contention in the alternative.

[19] Such picketing may implicate other sections of the Act, notably Secs. 8(b)(4) and 8(e); but, as noted above, these issues were otherwise disposed of by the parties and are not before me.

agreements. If this is the underpinning for the General Counsel's claim, I reject it. That letter appears to have been sent to Golden and the others without any particular regard for Golden's special circumstances; and, when the unions and Golden began their own separate series of meetings on and after June 10, that short-form proposal ceased to be in the picture. During those meetings, as the General Counsel's evidence clearly shows, the unions indicated that they did not have any problem with Golden's business plan. And their subsequent area standards subcontractors' proposal can only be taken as an indication that they had abandoned any prehire contract intentions they might have held until then,[20] in the light of Golden's stated intention to cease functioning as an employer of Four Crafts unit employees.

There is yet another potential basis in this record for the General Counsel's claim that Respondents were seeking a Section 8(f) prehire arrangement with Golden. Although raised in a different context, the General Counsel alludes to the fact that the Four Crafts eventually (after the lion's share of the picketing had already been conducted—and then temporarily enjoined) filed a joint petition seeking certification in a unit of Golden's jobsite employees. This joint petition is argued by the General Counsel to be "inconsistant [sic] . . . [with] any contention that Respondents do not seek to represent any of . . . Golden's employees and that therefore the picketing was not for a 'recognitional' . . . objective."

There is arguable inconsistency in these circumstances, to be sure, and, if the record were devoid of any other background, that inconsistency might acquire greater significance in seeking to determine the purpose of the picketing in question. But, on this record, where Golden had insisted that it did not intend to employ any future unit employees and the unions had acquiesced in this plan it would impute a certain perversity to the unions to suppose that their picketing goal was to obtain what would necessarily be a hollow commitment from Golden for a prehire agreement in the purely hypothetical event that Golden were to change its mind and to hire unit employees at some future point.

Moreover, inasmuch as the General Counsel maintains that, as of June and thereafter Golden "did not (and does not, and does not intend to) employ any employees in the unit," there is more than arguable "inconsistency" in the General Counsel's parallel assertion that the unions nevertheless wanted to represent those (nonexistent) unit employees.

It is worth noting finally that the eventual filing on July 15 of the joint petition by the Four Crafts is, at best, a fragile basis from which to impute a prehire contract purpose to the pre-July 15 picketing. While not ruling out reliance on evidence of conduct engaged in by a union at one point in time to explain the union's purpose in picketing at a substantially different point, the Board has also indicated a certain wariness on that score. See, e.g., *Adams Insulation*, supra, 248 NLRB at 313-315, and cases cited therein. Here, for all the reasons noted above, I find such wariness to be especially appropriate. I thus conclude that the General Counsel has not met his burden of establishing by a preponderance of the reliable evidence in the record as a whole that the picketing was recognitional within the contemplation of Section 8(b)(7)(C).[21]

I would, therefore, dismiss the complaint.[22]

Based on the foregoing analysis, I render these ultimate

CONCLUSIONS OF LAW

1. Golden is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act, and the Board's jurisdiction is properly invoked where the allegedly unlawful actions of Respondents were shown to have affected Golden's operations in commerce.

2. The Teamsters, Laborers, Cement Masons, and Carpenters are each labor organizations within the meaning of Section 2(5) of the Act.

3. It is unnecessary to determine whether the Council is itself a labor organization or whether it acted as an agent for the Four Crafts or any one of them.

4. The preponderance of the credible evidence in the record as a whole fails to show that the allegedly unlawful picketing was for "recognitional" purpose within the contemplation of Section 8(b)(7)(C) of the Act; accordingly, the complaint may not be sustained.

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[20] I do not reach the question whether, in the circumstances, the initial effort to get Golden to sign a short-form agreement amounted to an attempt to achieve an 8(f) prehire contract with Golden.

[21] If it were necessary to press this analysis further and to answer to the question "Why, then, did the Four Crafts file the July 15 petition, if not out of a genuine, recognitional, desire to achieve certified status as the representative of whatever jobsite construction employees Golden might employ?" I would conclude as follows: It is more probable than not that tactical considerations were motivating influences. Among the more obvious possibilities here would be a desire, by the filing of a petition before 30 days had elapsed, to blur the legal picture under Sec. 8(b)(7)(C) and to provide an arguably lawful basis for continuing picketing after the district court's 10-day restraining order had expired. Alternatively, within the same tactical framework, the Four Crafts might have hoped to establish that the unit sought by the petition consisted of only one employee (see Miscellany in findings, supra), thus privileging recognitional picketing forever under the precedent established in *Teamsters Local 115 (Villa-Barr Co.)*, 157 NLRB 588 (1966). But such tactical motivations do not truly explain the real intention underlying the picketing campaign—especially where there is more obvious and direct evidence that the true purpose of picketing was to pressure Golden to accept the proposal which the unions had left on the bargaining table 2 days before the picketing began, i.e., to commit itself to using only subcontractors who would apply to their employees the standards established in the new MLA.

[22] Although the General Counsel might have contended, based on the stacking of inferences, that the picketing campaign was a single, continuous, single-purpose process which endured for more than 30 days, he falls short of contending alternatively that such picketing would violate Sec. 8(b)(7)(C) in these circumstances. Rather, as noted, he seeks only to vindicate the proposition that recognitional picketing for a Sec. 8(f) prehire contract violates Sec. 8(b)(7)(C) if conducted for any time at all. Accordingly, such an alternative and hypothetical question is not before me unless I were, in effect, to stand in review of what was apparently a conscious judgment by the General Counsel to limit his complaint. Where I am not invited to play that role, and where that alternative possibility is itself fraught with difficulties too numerous to warrant explication, I choose not to burden this decision further by addressing it.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[23]

ORDER

The complaint is dismissed.

[23] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.